

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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STEVE RADULOVICH, EDITH RADULOVICH,  
and JOHN ROCHE,

UNPUBLISHED  
July 27, 2006

Plaintiffs-Appellants,  
and

SUE RADULOVICH,

Plaintiff/Counter Defendant/Third-  
Party Appellant,

v

CITY OF GROSSE POINTE WOODS, TED  
BIDGARE, and GENE TUTAG,

Nos. 256594  
Wayne Circuit Court  
LC No. 01-121296-NZ

Defendants,  
and

WALTER LEVICK, STEVE LEVICK, and  
LEVICK CONSTRUCTION,

Defendants-Appellees,

and

DONN FRESARD, FRESARD DEMARCO, PC,  
and THERESA TENAGLIA, a/k/a THERESA  
LEVICK,

Third-Party Defendants-Appellees.

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STEVE RADULOVICH, EDITH RADULOVICH,  
and JOHN ROCHE,

Plaintiffs,  
and

SUE RADULOVICH,

Plaintiff/Counter Defendant/Third  
Party Plaintiff-Appellant,

v

No. 258683, 260275  
Wayne Circuit Court  
LC No. 01-121296-NZ

CITY OF GROSSE POINTE WOODS, STEVE  
LEVICK, LEVICK CONSTRUCTION, VICKI  
DIAZ, TED BIDGARE, GENE TUTAG,  
GROSSE POINTE WOODS ZONING BOARD,  
RAY CARMONA, EARL WAKELY, DAVE  
CZUPRENSKI, PATRICIA CHYLINSKI, ERIC  
STEINER, ALLEN DICKINSON, THOMAS  
FAHRNER, ROBERT NOVITKE, and JOSEPH  
DANSBURY,

Defendants,

and

WALTER LEVICK,

Defendant/Counter Plaintiff-  
Appellee,

and

DONN FRESARD, FRESARD DEMARCO, PC,  
and THERESA TENAGLIA, a/k/a THERESA  
LEVICK,

Third Party Defendants.

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Before: White, P.J., and Fitzgerald and Talbot, JJ.

WHITE, P.J. (*concurring in part and dissenting in part.*)

I interpret the record somewhat differently than does the majority.

I conclude from the record that Levick leveled the home on his property without notifying plaintiffs, that the permits he did obtain were to make additions and alterations (to the home that no longer existed), and that the new home he built at least for a time encroached on plaintiffs' property. Were it not for Levick's disregard and violation of the City of Grosse Pointe Woods' permit requirements and ordinances, this suit would not have been filed. The City

issued ordinance violation tickets to Levick, as well as stop-work orders, and the circuit court judge who initially presided over this case granted plaintiff injunctions. Plaintiffs' claims of nuisance and trespass were well-founded, as was the filing of the lis pendens.

Against this backdrop, the second circuit court judge that presided over this case denied Levick's initial motion for security bond, but granted the motion of the City defendants and ordered plaintiff to post \$100,000 security, and \$25,000 for Diaz. Diaz filed no motion or brief, and made no argument at the hearing to support that there was either a substantial reason for requiring the bond, or to support that \$25,000 was a reasonable amount. The trial court dismissed plaintiff's claims against the City defendants and Diaz when plaintiff failed to post \$125,000 in security.

Levick filed a second motion for security for costs, by which time plaintiff's claims had been significantly whittled down and the case had been evaluated at \$1.00 in favor of plaintiff and \$1.00 in favor of Levick. Although I cannot conclude that the trial court abused its discretion in ordering plaintiff to post a bond at this juncture, the amount of the bond, \$25,000, seems excessive. In any event, plaintiff's case was dismissed for failure to post the bond.

Subsequently, Levick's counterclaim was dismissed on the merits. Under these circumstances plaintiff should have been allowed to tax costs on the counterclaim as the prevailing party. See MCR 2.625(B)(2).

/s/ Helene N. White